

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Kary B. Mullis)	
)	Art Unit: 1644
Application No. 10/754,456)	
)	Examiner: David A. Saunders
Filing Date: January 9, 2004)	
)	Confirmation No. 7994
Title: Chemically Programmable Immunity)	
)	
)	

**REQUEST FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

September 17, 2009

Dear Sir:

We respectfully request reconsideration of the Patent Term Adjustment applied to the above-noted patent as provided for under 37 C.F.R. § 1.705(d). Enclosed please find the following as required for this request:

1. The fee set forth in 37 C.F.R. § 1.18(e)
2. A statement of facts involved, specifying
 - i. The correct patent term adjustment and the basis or bases under § 1.702 for the adjustment.
 - ii. The relevant dates as specified in §§ 1.703(a) through (c) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled.
 - iii. A statement that this patent is not subject to a terminal disclaimer.
 - iv. A statement that there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

Table 1

Event	Rule Invoked	Relevant Event	Debit Days	Credit Days
January 9, 2004 Filing Date under 35 USC 111(a) (US National Application)	3-Year PTO Issue of Patent PTO must issue a patent within 3 years (not including exclusions) after the date on which the application was filed under 35 USC 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application. Period of adjustment (credits) begins on the day after the date that is 3 years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the listed exclusionary periods. 35 USC 154(b)(1)(B); 37 CFR 1.702(b), 1.703(b). The Applicant analyzes this rule without applying the USPTO 37 CFR §1.703(f) Actual Delay limitation in determining Credit Days under this rule. This is consistent with DC District Court ruling in Wyeth et al. v. Dudas, No. 07-1492 (D.D.C. September 30, 2008).	RCE Filed: November 1, 2007		296
Total USPTO, Debit, and Credit Days:			281	555
Corrected Total Patent Term Adjustment Days:				570

The table above (Table 1) describes the correct Patent Term Adjustment and the basis or bases under § 1.702 for the adjustment. It also includes the relevant dates as specified in §§ 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled. This patent is not subject to a terminal disclaimer. The Applicant also submits herewith that there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

The calculations and supporting evidence in the table above show the correct Patent Term Adjustment, in light of the DC District Court ruling in Wyeth et al. v. Dudas, No. 07-1492 (D.D.C. September 30, 2008), to be 570 days. This is greater than the USPTO calculated PTA of 274 days printed on the Determination of Patent Term Adjustment mailed August 21, 2009. Although explained in detail in Table 1, important dates to note included in the calculation are the following:

2. January 10, 2007: 1st day of “B” delay, wherein “B” delay invokes the 3-Year PTO Issue of Patent rule.

PTO must issue a patent within 3 years (not including exclusions) after the date on which the application was filed under 35 USC 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application. Period of adjustment (credits) begins on the day after the date that is 3 years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 USC 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the listed exclusionary periods. 35 USC 154(b)(1)(B); 37 CFR 1.702(b), 1.703(b). The Applicant analyzes this rule without applying the USPTO 37 CFR §1.703(f) Actual Delay limitation in determining Credit Days under this rule. This is consistent with DC District Court ruling in Wyeth et al. v. Dudas, No. 07-1492 (D.D.C. September 30, 2008).

4. November 1, 2007: Last day of “B” delay.

The calculation thus provides for 570 days of Patent Term Adjustment, a value that is greater than the USPTO calculated PTA of 274 days printed on the face of the patent. The Applicant therefore hereby respectfully requests reconsideration of the PTA given to this patent.

The fee set forth in 37 C.F.R. § 1.18(e) for this request is enclosed. Applicants believe no additional fees are required. Should the Examiner determine otherwise, the Commissioner is authorized to charge any underpayment of fees to Deposit Account No. 11-0980.

Respectfully Submitted,
/Stephen C. MacDonald, Ph.D./
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